

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Appeal No. 13071, of 1920 N Street Associates, pursuant to Sections 8102 and 8206 of the Zoning Regulations, from the decision of the Chief, Zoning Review Branch that the use of parts of the first and second basements for recreational facilities in the subject office building does not constitute a permitted accessory use in an SP-2 District at the premises 1920 N Street, N.W. (Square 116, Lot 75).

HEARING DATE: October 24, 1979  
DECISION DATE: November 7, 1979

FINDINGS OF FACT:

1. The subject property is located on the south side of N Street, N.W. between 19th and 20th Streets. It is known as 1920 N Street, N.W. and is in a SP-2 District.
2. In BZA Order No. 12666, dated August 31, 1978, the Board approved the construction of the subject SP office building.
3. The office building under construction contains 105,000 square feet of rentable space on the upper floors, 8,000 square feet of rentable space in the cellar, and 50,000 square feet of space in the first and second basements.
4. The appellant proposes to locate recreational uses on 2,500 square feet of the cellar, 4,000 square feet in the first basement, and 4,000 square feet in the second basement.
5. The uses proposed are exercise and shower facilities and limited light food service on the cellar level. The appellant testified that such uses have been requested by building tenants to permit, for example, shower facilities for bicycle commuters or joggers without the necessity for the installation of wet stack plumbing on individual floors, working lunches to be sent up to tenants without the necessity of going outside the building, and exercise facilities for those interested.
6. The appellant's application for a certificate of occupancy to use parts of the first and second basements of the subject office building for "exercise facilities, classrooms, dressing area, food bar, weight control, nutrition, strength development, cardiovascular fitness monitoring" was disapproved by the Zoning Administrator on the grounds that the proposed use was not a permitted use in an SP-2 District.

7. The appellant argued that the proposed use should be permitted under Paragraph 4104.63 of the Zoning Regulations as an accessory use customarily incidental to the uses authorized by this Section.

8. The appellant testified that he proposes the same or similar uses that the BZA permitted the YMCA in BZA Order No. 12045.

9. The appellant testified that the neighborhood is a mixed use one and that the proposed use would be in harmony with the variety of pedestrian-oriented uses located in buildings surrounding the subject site.

10. The appellant testified that numerous nearby office developments in several different zones contained recreational facilities of the type proposed and that recreational facilities have become increasing common amenities in office and residential developments.

11. The appellant argued that the Zoning Regulations do not define what "customary" accessory uses are for office buildings in this zone but only those uses accessory to an apartment house or hotel. He further argued that Paragraph 4101.63 of the Zoning Regulations controls since it permits accessory uses that are customarily incidental to an authorized use such as the office building.

12. The Zoning Administrator testified that the appellant at the time of the application for a certificate of occupancy informed him that the proposed use would not be limited exclusively to the tenants of the subject office building but would be open to the neighborhood and that the proposed venture would be a profit making venture and not non-profit for a common social objective as in a private club. The Zoning Administrator further testified that in the plans for the subject office building as approved by the BZA no uses other than office use and parking spaces were identified. For all those reasons, the ZA disapproved the issuance of a certificate of occupancy. The ZA also testified that some of the buildings which the appellant referenced as having the proposed uses were in fact private clubs and not SP office buildings, such as the YMCA which the BZA approved or the Watergate which was approved as a Planned Unit Development. As to apartment houses with swimming pools on the roof, this is an accessory use permitted for the tenants of the building. The Board concurs with the reasoning of the Zoning Administrator.

13. Advisory Neighborhood Commission - 2B testified at the public hearing that ANC-2B voted unanimously to support the position of the ZA that the use of recreational facilities in the subject building did not constitute a permitted accessory use in the SP-2 District. The ANC further testified that recreational uses are not listed among the permitted accessory uses to apartment houses and hotels in the Zoning Regulations, and that office buildings are not even mentioned. The ANC testified that when the Board approved the subject office building, it was for office and parking uses only, and that the appellant at that time had made no request for recreational uses. The ANC further opposed the proposed use since it was a commercial use and was not proper to an SP-2 District which is a buffer zone between the commercial and residential.

14. The Dupont Circle Citizens Association testified that it recommended that the appeal be denied for the same reasons as stated by the ANC.

15. The Board advised the ANC to submit its recommendation in writing. The Board notes that this was not done. Accordingly, since the recommendation is not in writing, the Board is not required to give great weight to the issues and concerns of the ANC.

#### CONCLUSIONS OF LAW:

Based on the record, the Board concludes that the proposed recreational uses are not uses that are customarily incidental to the principal use, an office building in a SP-2 District. Paragraph 4101.61 of the Zoning Regulations spells out the type of use that is appropriate as an accessory use to a hotel or apartment house in an SP-2 District. It does not include uses for an office building. The appellant argues that the subject office building has been authorized and Paragraph 4101.63 permits accessory uses customarily incidental to the authorized use. While this may be true, the Board concludes that the appellant has not proved that his proposed uses are "customarily incidental". As found in Finding No. 12, the proposed recreational uses will not be limited to the lessees of the office building. The facilities proposed will be open to the general public. This is a separate business from operating an office building. This is more than a mere amenity to the lessees. It is not "customarily incidental" to the operation of the office building. The Board is also aware that in Finding No. 18 of the aforementioned BZA Order No. 12666 the uses of this building were limited by the Board. In that Order the only uses sought by the applicant were office uses and parking uses. For all the above reasons, the Board concludes that the proposed recreational uses are not customarily incidental to the existing office use.

The Board further concludes that since the resolution of the ANC was not submitted in writing to the record, it is not required to give it great weight. Accordingly, it is ORDERED that the Appeal is DENIED and the decision of the Zoning Administrator is UPHELD.

VOTE: 4-0 (Walter B. Lewis, Charles R. Norris and William F. McIntosh to DENY; Leonard L. McCants to DENY by PROXY; Chloethiel Woodard Smith not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:

  
\_\_\_\_\_  
STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER: 17 MAR 1980

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."